

REMARKS/ARGUMENT

Applicant hereby responds to the Office Action mailed December 5, 2007 and the February 14, 2008 telephone interview between the Examiner and Applicant's representative, Kelly W. Cunningham, Esq.

A. Claim Rejections Under 35 U.S.C. Section 103

1. Claims 38, 40, and 42

The Examiner rejected claims 38, 40, and 42 in view of the combined teachings of Sjogren, U.S. Patent No. 1,584,668, and Jacobson, U.S. Patent No. 4,953,873. Applicant respectfully disagrees. Applicant nevertheless amends without prejudice claim 38 to recite the "calculating" step of claim 39 and adding the phrase "such that the inchoate cargo calculation changes during play of the game."

In the Office Action, the Examiner had rejected claim 39, taking the position that this claim was obvious in view of the combined teachings of Sjogren, Jacobson, and Perrie, U.S. Patent No. 6,186,505. Applicant respectfully disagrees with this rejection as well. Jacobson does not disclose any step of calculating an inchoate cargo, let alone repeating the step during play of a game. Applicant additionally submits herewith a declaration to overcome this obviousness rejection, including his showing of commercial success. Applicant therefore contends that claim 38, as amended, is not

obvious in light of the foregoing cited prior art and that the rejection of claims 40 and 42 are rendered moot.

2. Claims 39 and 41

The Examiner further rejected claims 39 and 41, taking the position that the claims are obvious in view of the combined teachings of Sjogren, Jacobson, and Perrie. Applicant respectfully disagrees with this rejection as well, but cancels claim 39 without prejudice to any pending or future patent application disclosing or claiming the same or similar subject matter and contends that the foregoing amendment to claim 38 renders this grounds for rejection moot as to claim 41.

3. Claims 43, 46-47, 49-51, and 53-59

The Examiner rejected claims 43, 46-47, 49-51, and 53-59 in view of Seay, U.S. Patent No. 2,831,690, and Jacobson. Applicant respectfully disagrees, but Applicant nevertheless amends without prejudice claims 43 and 51 to recite the “calculating” step of claims 48 and 52, respectively, and adding the phrase “such that the inchoate cargo calculation changes during play of the game.”

In the Office Action, the Examiner had rejected claims 48 and 52, taking the position that the claims are obvious in view of the combined teachings of Seay, Jacobson, and Perrie. Applicant respectfully disagrees with these rejections as well.

Jacobson does not disclose any step of calculating an inchoate cargo, let alone repeating the step during play of a game. Applicant additionally submits herewith a declaration to overcome these obviousness rejections, including his showing of commercial success. Applicant therefore contends that claim 43 and 51, as amended, are not obvious in light of the foregoing cited prior art and that the rejection of the foregoing dependent claims 46, 47, 49, 50, and 53-59 are rendered moot.

4. Claim 44

The Examiner also rejected claim 44, taking the position that the claim is obvious in view of the combined teachings of Seay, Jacobson, and Piper, U.S. Patent No. 5,135,231. Applicant respectfully disagrees with this rejection, but contends that the foregoing amendment to claim 43 renders this grounds for rejection moot.

5. Claim 45

The Examiner further rejected claim 45, taking the position that the claims are obvious in view of the combined teachings of Seay, Jacobson, Piper, and further in view of Cambardella, U.S. Patent No. 4,070,026. Applicant respectfully disagrees with this rejection as well, but contends that the foregoing amendment to claim 43 renders this grounds for rejection moot.

6. Claims 48 and 52

The Examiner further rejected claims 48 and 52, taking the position that the claims are obvious in view of the combined teachings of Seay, Jacobson, and Perrie. Applicant respectfully disagrees with this rejection as well, but cancels claims 48 and 52 without prejudice to any pending or future patent application disclosing or claiming the same or similar subject matter.

B. Inventor's Declaration Pursuant to 37 CFR 1.132

Applicant submits concurrently herewith an inventor's declaration pursuant to 37 C.F.R. § 1.132 attesting to this response and the commercial success of his invention.

C. Concluding Statements

Claims 38, 40-47, 49-51, and 53-59 remain in this application. Applicant believes that these amendments are not narrowing amendments and introduce no new matter. Claims 1-37 were previously cancelled, and claims 39, 48, and 52 are hereby cancelled without prejudice to any future or pending application disclosing or claiming the same or similar subject matter.

Application No. 10/798,738
Response dated June 5, 2008
Response to Office Action mailed December 5, 2007
Attorney Docket No. 04-13259

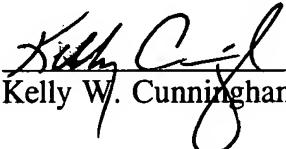
Having responded to each of the Examiner's concerns, Applicant asserts that the application is now in condition for allowance and solicits such action. If a telephone interview will advance the allowance of the application, enabling an Examiner's amendment or other meaningful discussion of the case, Applicant requests the Examiner contact Applicant's representative at the number listed below.

It is not believed that any additional fees are due; however, in the event any additional fees are due, the Examiner is authorized to charge Applicant's attorney's deposit account no. 03-2030.

Respectfully submitted,

CISLO & THOMAS LLP

Date: June 5, 2008


Kelly W. Cunningham, Reg. No. 43,570

Enclosure

Declaration of Andrew Schwartz

CISLO & THOMAS LLP
1333 2nd Street, Suite 500
Santa Monica, California 90401
Tel: (310) 451-0647
Fax: (310) 394-4477
www.cislo.com

T:\04-13259\Response to Dec 5 2007 office action.DOC